

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ENTERGY NUCLEAR VERMONT
YANKEE, LLC and ENTERGY NUCLEAR
OPERATIONS, INC.,

Plaintiffs,

v.

PETER SHUMLIN, in his official capacity as
GOVERNOR OF THE STATE OF
VERMONT; WILLIAM SORRELL, in his
official capacity as the ATTORNEY
GENERAL OF THE STATE OF VERMONT;
and JAMES VOLZ, JOHN BURKE, and
DAVID COEN, in their official capacities
as members of THE VERMONT PUBLIC
SERVICE BOARD,

Defendants,

Docket No: 1:11-CV-99

NEW ENGLAND COALITION, INC.'S PROPOSED AMICUS CURIAE
MEMORANDUM OF LAW

NOW COMES the New England Coalition, Inc., by and through its attorneys, Jared Margolis and Brice Simon, and hereby submits the following Memorandum of Law supporting Defendants' Opposition to Plaintiffs' pending Motion for Preliminary Injunction.

MEMORANDUM OF LAW

INTRODUCTION

On April 22, 2011 Plaintiffs filed a Motion for Preliminary Injunction, asking the Court to preserve the "status quo" pending resolution of this litigation. The New England Coalition, Inc. ("NEC") believes that the Defendants' Opposition memorandum reveals the inadequacy of the Plaintiff's claims and the inconsistencies in their actions and arguments regarding the State's

role in the regulation of the Vermont Yankee plant. NEC provides the following to supplement the Defendants' arguments.

ARGUMENT

I. Plaintiffs' Claims Lack Merit and they Cannot Show a Likelihood of Success

A. The State's Actions are not Preempted

Plaintiffs argue that the Supreme Court in *Pacific Gas & Electric Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983) (herein "*PG&E*") made a distinction between the States' role in permitting new nuclear power plants to be built (which they agree States have the authority to deny), and the operation of an existing nuclear power plant, which Plaintiffs' argue is entirely preempted. Plaintiffs' Motion at 15. This distinction was not made by the Court in *PG&E*, which provided for dual jurisdiction over nuclear power plants, and is further inapposite for this matter. The State is not in any way attempting, in the challenged statutes, to dictate how Vermont Yankee is operated, but rather is asserting authority to decide whether the plant should continue to operate past its initial license period. If the State has the ability to make an initial decision as to whether a nuclear power plant should be allowed to operate in the State (as even Plaintiffs' affirm), it follows that after the initial 40 year license period approved by the State ends, the ability to decide whether it is in the public interest to have a nuclear power plant operating in the State is once again within the State's purview.

This is an issue of first impression, and clearly the Supreme Court in *PG&E* was not contemplating the relicensing process (since no plant would be up for relicensing for another 30 years); however, the public policy and legal analysis inherent in the Court's decision in *PG&E*, providing dual State/Federal jurisdiction over nuclear power plants and allowing States to decide whether it is in their best interests to allow a nuclear plant to operate and accumulate Spent

Nuclear Fuel in-state, supports the States' right to then have the same authority to decide, after the approved license period ends, whether continued operation should be permitted.

Moreover, State regulation is not limited to the construction phase of a nuclear power plant. Plaintiffs fail to address the Supreme Court's decision in *English v. General Electric Co.*, 496 U.S. 72 (1990), wherein the Supreme Court reiterated the dual-jurisdiction that exists regarding nuclear power plants, and clarified the limited scope of federal preemption. The Court, in *General Electric*, specifically held that "state action will be preempted if it has a 'direct and substantial effect on the decisions made by those who build or operate nuclear facilities concerning radiological safety levels,'" and even added that "this does not include 'every state law that in some remote way may affect the nuclear safety decisions made by those who build and run nuclear facilities....'" *Id.* at 85 (citations omitted – emphasis added). The corollary of the Supreme Court's decision in *General Electric* is that state action – even action concerning plant construction and operation – which does not directly and substantially affect radiological safety levels, is not preempted. Therefore, Entergy's claim that any state action affecting plant construction and operation is preempted as a matter of law is simply not true.

This language indicates that the Supreme Court in *General Electric* did not intend to alter its holding in *PG&E*, which provided that States retain jurisdiction over traditional state concerns, but was merely clarifying that only control over radiological safety levels remains within NRC's exclusive jurisdiction. Where the State's actions do not pertain to radiological safety levels, as is the case in this matter where the State must balance economic, reliability and land use concerns to decide whether continued operation is within the best interests of the State, there is no preemption pursuant to *General Electric*. This is consistent with the NRC regulations cited by the Defendants in their Opposition, which clearly indicate that NRC oversight of

relicensing pertains to the health and safety aspects of plant operations, but “the NRC does not have a role in the energy-planning decisions of state regulators and license officials.... Thus, whether the facility will continue to operate is based on factors such as the need for power or other matters within the state’s jurisdiction....” Defendants’ Opposition at 9 (Kolber Decl. Ex. 1 - NRC, Final Report (March 2006)).

B. The State Has a Clear Non-Preempted Rationale for Denying an Extended License

The Supreme Court, in *General Electric*, stated that “the *PG&E* Court defined the preempted field, in part, by reference to the motivation behind the state law.” *General Electric* at 85. This statement reiterates the dual jurisdiction that the Court has determined exists regarding regulation of nuclear power plants, as well as the limited scope of preemption by the Federal government. Pursuant to this, as long as the State asserts jurisdiction in order to regulate what the Court in *PG&E* referred to as traditional State concerns (i.e. economic and land-use issues), the State is not preempted. The Plaintiffs have pointed to nothing in the challenged statutes that suggests the motivation behind the State’s assertion of authority is solely radiological health and safety concerns, but rather rely on cherry-picked press statements, many of which came after the decision was made not to relicense the plant (as Defendants point out).

Moreover, one of the fundamental reasons that Entergy now finds itself needing to make unsupported and unreasonable arguments regarding preemption – which are belied by the clear language of the Supreme Court as well as NRC regulations, as Defendants readily demonstrate – so as to avoid any State involvement in their bid for relicensing, is the long history of accidents and mismanagement at Vermont Yankee, as well as the recent lies regarding the presence of leaking underground pipes at the VY station (which have contaminated the groundwater at the site – a public trust resource in Vermont), that have resulted in a total loss of confidence in

Entergy's ability to reliably operate the plant in the future. These failures have reliability and economic implications that provide a valid, non-preempted basis for the State's denial of continued operation.

Since purchasing the plant, Entergy has allowed a series of events to occur that have eroded the States' faith in their management, and the reliability of the plant. These events include:

- A transformer fire in 2004, caused by a mechanical failure in the generator system, and the root cause was found to be an inadequate inspection program which failed to identify the problem and ensure reliability.
- The 2007 cooling tower collapse caused by inadequate inspection and maintenance programs.
- The subsequent 2008 cooling tower incident, caused by inadequate engineering evaluation and contractor oversight.
- Turbine stop valve incident, wherein a stuck stop valve was hit with a mallet tripping all of the valves and causing a SCRAM event, caused by inadequate troubleshooting and oversight.

See Shadis Decl. Exhibit 1 (testimony of Mr. Colomb – VY Site Vice-President). This series of events lead David Lamont, witness for the Department of Public Service, to state during the hearings before the PSB in Docket 7440 that “there is a growing perception among the public that the current operators of the plant are incompetent.”¹ Many other issues related to reliability were known to the Vermont Senate when it declined to approve continued operation.²

¹ Shadis Decl. ¶ 2, Exhibit 2 (PSB Docket No. 7440 Tr. 6/3/09 at 52).

² For example, the nuclear industry utilizes a standard Equipment Reliability Index (ERI) to track the reliability of equipment at nuclear plants. ENVY first adopted the ERI in September of 2008. When the ERI was initially adopted at VY, the site ranked in the bottom quartile of the industry. Shadis Decl. Exhibit 3 (PSB Docket 7440 Tr. 5/26/09 at 111). The Public Oversight Panel, convened by the legislature, specifically found that ENVY has been slow to adopt the ERI, and showed concern regarding their low performance. Shadis Decl. Exhibit 11 (Public Oversight Panel Report – Executive Summary at ii). The Public Oversight Panel further found that ENVY had a higher-than-expected preventative maintenance backlog, Shadis Decl. Exhibit 11 at iv, and Entergy admitted in PSB Docket 7440 that its preventative maintenance backlog does not meet “excellence in the industry” standards. Shadis Decl. Exhibit 4 (PSB Docket 7440 Tr. 5/26/09 at 127). Many other such items are in the record before the PSB and legislature – too numerous to mention in the limited space provided by the Court for this amicus memorandum. See the Executive Summary of the Public Oversight Panel Report for more.

This lack of faith in the management of Vermont Yankee may also be a reason for the attrition the plant has experienced recently. Plaintiffs stated in their motion that they are losing employees, and competition to hire skilled employees is intense, Plaintiffs' Motion at 36; however, they fail to address the fact that skilled workers may not want to work at Vermont Yankee because of its appalling safety record and poor management. In fact, the union representing the workers at Entergy's Pilgrim plant intervened in an application by Entergy to combine the ownership of Pilgrim and Vermont Yankee because they did not want to be associated with the Vermont Yankee safety culture. *See* Shadis Decl. Exhibit 19 at 5 (stating union "members currently employed at PNPS could suffer harm to their career prospects if other potential employers come to view PNPS operations as similar to those at Vermont Yankee").

Having trust in the management of the plant is essential for the State to find that relicensing would be in the public good, and invokes economic and reliability concerns that do not implicate preempted radiological safety matters. Even Entergy officials have recognized this, such as Mr. Colomb, Vermont Yankee site vice-president, who stated under oath before the PSB that the perception is that there is a question of reliability at the plant due to the above-mentioned fiascos, and agreed that the Board should also be taking a look at the competence of management to deal with those kinds of issues in deciding whether to grant a CPG.³

This long buildup of mistrust in Entergy's management of the plant came to a head when recently the State was made aware that underground pipes at the plant were leaking radioactive contaminants into the groundwater – a public trust resource in Vermont. This came as quite a surprise, considering that Entergy representatives had previously claimed that there were no underground pipes at the VY station carrying radionuclides. Shadis Decl. Exhibit 6. As it turns out, these statements, made to the legislature as well as under oath before the PSB, were entirely

³ Shadis Decl. Exhibit 5 (PSB Docket No. 7440 Tr. 5/26/09 at 178-179).

incorrect and misleading, leading to the PSB issuing sanctions and ordering Entergy to compensate NEC for the “fees and costs reasonably incurred in [] Docket [7440] as a direct result of Entergy VY’s provision of incorrect information regarding underground piping.” PSB Docket No. 7440, Order re Motion for Sanctions at 12 (Jun. 4, 2010).

Plaintiffs would have this Court believe that it is the tritium leak itself that triggered the Vermont Legislature to vote against relicensing out of fear for public health and safety. However, it is not just the leaking of radioactive contaminants that was uncovered when Entergy admitted that underground pipes were leaking at the VY station. The fact that Entergy management either did not know about the presence of the underground pipes, or else lied about their existence, indicates that this State is unable to rely on their management of this nuclear power plant.

These incidents and managerial failures, as well as the associated deception on the part of Entergy, provide a valid, non-preempted basis for the State’s decision. While it is true that reliability concerns may implicate safety issues, they also present environmental and economic concerns that are clearly within the purview of the State pursuant to *PG&E*. For example, if Vermont relies on Vermont Yankee for its power supply, and the plant must be shut down for long periods (or even permanently) without warning due to maintenance and reliability related issues inherent in an ageing nuclear plant with poor management, then the State may need to replace that energy supply without notice, exposing Vermont to higher rates than if we work now towards replacing VY with other, more reliable, sources of energy.⁴

⁴ A prime example of this is the plant’s condenser, which has had ongoing problems associated with in-leakage and condenser tube wear and erosion. Entergy’s long range plans include replacement of the condenser, which has been deemed unreliable for operation through the 20 year relicensing period, and plans on replacing the condenser sometime in 2013 or 2014. Shadis Decl. Exhibit 7 (PSB Docket 7440 Tr. 5/26/09 at 115-126). In PSB Docket 7440, ENVY Site Vice President Mr. Colomb stated that if the condenser were to fail, the plant would have to conduct a cost/benefit analysis in order to determine

The recent leaks, as well as the potential for more leaks (and more lies) as the plant ages, also pose obvious environmental concerns, as well as land-use concerns regarding the future re-use of the site that are well within the jurisdiction of the State pursuant to *PG&E*, and further provide a valid, non-preempted basis for the State's decision to deny continued operation. These leaks further implicate the argument made by Plaintiffs that there would be no environmental benefits from shutting down the VY station. On the contrary, the recent and continuing leakage of contaminants at the station is indicative of both the lack of sufficient ageing management to ensure that the plant can physically operate reliably, as well as a lack of adequate oversight by management to prevent such problems from occurring.⁵ Shutting the plant down would prevent additional groundwater contamination and preserve the reuse of the site in the future.

Plaintiffs' argument that any economic or other concerns are merely a pretext for safety-related matters is thus unfounded; therefore, Plaintiffs' claims that they are likely to succeed on the merits of their complaint are untenable. There is a clear non-safety rationale for the State's regulation – the economic, environmental, and land-use related concerns inherent in the reliability issues discussed above, which provide a valid, non-preempted basis for the State's decision not to allow this ageing and deteriorating power plant, and its mendacious and ineffective management, to continue to operate in our State.

whether replacing the condenser was worth the costs. *Id.* If ENVY decides that sleeving the tubes provides an adequate short-term solution, they may decide to put off the replacement, and if it gets put off long enough, it may be more economical to shut the plant down rather than replace the condenser in the middle of the relicensing period (should relicensing be granted). Shadis Decl. Exhibit 8 (*Id.* at 183-189). This is a reliability concerns with obvious economic implications that the State had to consider in determining whether continued operation is in the public good.

⁵ The Rutland Herald reported that a "state official said he believes the radioactive leak at Yankee had been going on for two years before it was discovered by Entergy Nuclear in early January, based on hydrology studies of the site." *See* Shadis Decl. Exhibit 9 (Rutland Herald article dated May 28, 2010). The article further stated that "NSA said the failure to look into the [presence of] sinkholes was a 'missed opportunity' to find the leak a year or more before the leak was discovered. *Id.*

C. The Plaintiffs' Arguments Regarding the MOU are Unfounded

Plaintiffs have argued that the MOU was expressly premised on the assumption that the PSB and not the General Assembly would make the decision on relicensing, and that the 2005 and 2006 Acts fundamentally altered the agreements made in the MOU thereby releasing Entergy from its commitment not to pursue a preemption claim. Plaintiffs' Motion at 27. The Defendants, in their Opposition Memorandum, provide solid arguments regarding the failure of the Plaintiff to bring these preemption claims in a timely manner, and their history of acquiescence to State jurisdiction and oversight – including their support of the very legislation they now claim to have altered the agreements in the MOU. NEC believes there is more to this than has been presented by Defendants, and which goes to the very heart of Plaintiffs' arguments regarding the MOU.

During the hearings before the PSB in Docket 7440 (the relicensing docket), Entergy objected to NEC's discovery requests that pertained to reliability matters, claiming that reliability was solely within the purview of the legislature pursuant to Act 189 and that the investigation and discussion of reliability by the parties before the PSB would be at cross purposes with the intent of Act 189.⁶ Entergy therefore provided almost no evidence regarding plant reliability outside the scope of the Comprehensive Reliability Assessment ordered by the Legislature.

This evinces the Plaintiffs wholly inconsistent position with regards to the role of the Legislature, and completely undermines their argument that the State has altered the agreements

⁶ See Shadis Decl. ¶ 10 (Exhibit 10 - General Objections made by Entergy – stating that “Discovery in this docket regarding VY Station reliability issues would be inconsistent and conflict with the intent and processes created by Act No. 189.... Discovery in this docket on reliability issues would, furthermore, be duplicative of the review and document-disclosure process under Act No. 189, causing Entergy VY to expend double resources on an issue that is being addressed under Act No. 189”).

of the MOU to their detriment. It is entirely disingenuous for Entergy to now argue that they had only agreed to PSB oversight (rather than legislative authority) for relicensing, when they not only assented to legislative oversight, but used it as a shield to deny the PSB from fully investigating reliability issues that they claimed were being considered by the Legislature (and which provided a non-preempted basis for the Senate's denial of continued operation).

II. Plaintiffs' Claims Regarding Irreparable Harm and Public Interest Lack Merit

Whereas the Plaintiffs have failed to make a compelling showing that they are likely to succeed on the merits of their claims, and the Defendants have shown that the challenged statutes are not preempted pursuant to Supreme Court precedent and NRC regulations, this Court need not even address whether Plaintiffs will suffer irreparable harm, or whether a preliminary injunction is in the public interest. However, should the Court proceed to review these matters, NEC would point out that Plaintiffs have provided unfounded arguments that provide no basis for a preliminary injunction.

A. Plaintiffs' Claims Regarding Irreparable Harm From Preparation For The Fall Refueling Outage Are Unfounded

Plaintiffs have claimed that they will suffer irreparable harm associated with the Fall 2011 refueling outage if an injunction is not granted. These claims are completely unfounded. First, Plaintiffs fail to explain why they would not perform the scheduled routine and required maintenance during that refueling, regardless of whether they would operate the plant after March of 2012. Since the plant would continue to operate for at least another 6 months, and whereas Entergy refers to the shutdown as a "mandatory" refueling outage, it does not appear that they would suffer any harm or lost income from performing the maintenance tasks that are currently scheduled for that outage, even if it is not known whether they will be able to operate after 2012.

The only real claim that Plaintiffs make regarding irreparable harm from the refueling outage is the requirement that they order fuel by July of 2011. An injunction, however, would not resolve this issue, since a decision on the merits would still need to be made to determine whether the plant may continue to operate after 2012. Therefore, even if an injunction were granted, there still remains the possibility that fuel would be ordered in July, 2011, yet the plant would not be able to operate after March 2012. Consequently, an injunction would not prevent what Plaintiffs' claim to be an irreparable harm.

Moreover, Plaintiffs' claim that the fuel assemblies fabricated for the VY station are tailored to the particular technical specifications of that facility, and cannot be used in another facility is specious, and the Court must not rely on these statements, which are contradicted by prior events indicating it is possible to transfer such fuel. Plaintiffs' Motion at 40. Contrary to Plaintiffs' claims, it appears possible to take fuel that was fabricated for one nuclear power plant and reconfigure it for use in another one. This was undertaken when the Shoreham plant on Long Island operated for only two days, and was then forced to shut down. The fuel, which had been loaded into the core, was then reconfigured and sold/transferred to the Limerick plant in Pennsylvania. *See* Shadis Decl. ¶ 12. Entergy's claims regarding the impossibility of transferring fuel after it is designed for one plant, and even after it is loaded into the core, are therefore unfounded.

Indeed, Entergy owns a nuclear power plant that is considered a "sister plant" to Vermont Yankee – the Pilgrim plant, which was built to the same specifications and could likely use the fuel designed for Vermont Yankee with very little modification necessary. *Id.* at ¶ 13. Plaintiffs have failed entirely to discuss this plant, or the potential to reconfigure fuel for use in that

facility. They have therefore not provided sufficient or reliable information for this Court to find that a preliminary injunction is necessary to avoid irreparable harm.

B. Plaintiffs' Claims Regarding the Public Interest Lack Merit

Plaintiffs have argued that a preliminary injunction is in the public interest and that there would be no environmental benefit from a shutdown. Plaintiffs' Motion at 46-59. These claims lack merit, and Plaintiffs have failed to provide a sufficient basis to justify a preliminary injunction. NEC would also point out that it is beyond ironic that Entergy – an energy conglomerate that is beholden to its shareholders and not the people of Vermont – is attempting to tell this Court what is in the best interests of the State when the Governor and State legislature, elected by the people to represent the public interests, are adamantly opposed to the continued operation of the Vermont Yankee station. While NEC believes that the Defendants have provided compelling arguments indicating that a preliminary injunction would not serve the public interest, NEC provides the following supplementary arguments to support this position.

1. Economic impacts

To support their argument regarding the economic impacts of closure, Plaintiffs assert that “the closure of the Maine Yankee station in 1997 confirms the impacts on jobs and tax revenues that can be expected from a premature shutdown of the Vermont Yankee station.” Plaintiffs' Motion at 60. While the Defendants, in their response, properly point out that the requested injunction would not resolve any of the claimed economic harms, since the Court has scheduled this matter to provide for a decision on the merits prior to the end of the current license period, and have further shown that the replacement of Vermont Yankee would create jobs that would offset the impacts claimed by the Plaintiffs, Defendants seem to accept the claims made by Plaintiffs regarding the impacts of the closure of Maine Yankee on the

surrounding region, stating that “the State of Vermont has already laid the groundwork to avoid the kind of community and economic dislocation that resulted when Maine Yankee and Yankee Rowe closed.” Defendants’ Opposition at 60. Though it is commendable that the State take measures to ameliorate any potential economic impacts of the closure of the Vermont Yankee station, the Plaintiffs have provided an unfounded depiction of the impacts of the closure of Maine Yankee, which the Defendants did not address.

The economic impacts of the closure of Maine Yankee were much less onerous than Plaintiffs would have this Court believe. In fact, the Vermont Legislature was provided with a report on the economic implications and ramifications of the closure of Maine Yankee on the local and regional economy, authored by NEC’s expert consultant Raymond Shadis, prior to the vote denying continued operation of Vermont Yankee. This report indicates that the closure of Maine Yankee had only very minor economic impacts on the surrounding region. *See* Shadis Decl. ¶ 14 – Exhibit 14. Entergy’s claims regarding Maine Yankee are thus unfounded.

Moreover, recent press reports regarding Green Mountain Power’s deal with NextEra to purchase power from the Seabrook nuclear power plant for 4.66-cents/kwh (below what GMP is paying for power from Vermont Yankee), indicate that the closure of Vermont Yankee would not result in higher energy prices or increased greenhouse gas emissions, as Plaintiffs claim.⁷ *See* Shadis Decl. Exhibit 15.

2. Environmental impacts

The Plaintiffs have claimed that a preliminary injunction is in the public interest due to a variety of environmental concerns, and Defendants provided arguments to counter Plaintiffs’ claims. NEC would like to bring to the Court’s attention, however, that the environmental

⁷ Press reports additionally state that Vermont Electric Cooperative is also seeking a power purchase agreement with NextEra to replace power currently purchased from Vermont Yankee.

impacts of continued operation are not clear, and have not been sufficiently addressed by Plaintiffs in their Memorandum.

While Plaintiffs claim that air emissions are negligible since the plant does not combust fossil fuel to generate electricity (Plaintiffs' Motion at 57), they fail to mention the use of oil-fired burners and emergency diesel generators, which are regularly tested and emit various contaminants, including CO².⁸ Similarly, Plaintiffs claim that no impacts from cooling tower drift on crops or native plants are expected (Plaintiffs' Motion at 58), yet they don't mention that the plant regularly uses biocides that may be emitted in cooling tower drift, and which could impact nearby natural communities.⁹ During the relicensing hearings before the PSB, it was admitted that neither Entergy nor the Vermont Agency of Natural Resources conducts any testing of nearby wetlands for the presence of biocides, which can bio-accumulate and cause negative impacts on the environment.¹⁰

Moreover, as discussed above the plant has recently been found to be leaking contaminated water from underground pipes, which poses further questions about environmental contamination from ageing underground pipes if the plant continues to operate. During the hearings before the PSB (Docket 7600) it became clear that no testing has been done for non-radiological contaminants, such as chemicals, cleaning agents, lubricants or other contaminants that may be spread by leaking pipes.¹¹ Entergy is relying on sentinel wells to protect Vermont's public trust groundwater resources, as well as the Connecticut River and associated water resources; however, since testing is not being undertaken at these wells for non-radiological

⁸ Air emissions at VY come from multiple sources, including the large heating boilers, the waste oil furnaces, and solvent cleaning operations. Shadis Decl. Exhibit 16 (PSB Docket 7440 Tr. 6/1/09 at 178-180).

⁹ See *Id.* (PSB Docket 7440 Tr. 6/1/09 at 181-182).

¹⁰ Shadis Decl. Exhibit 17 (PSB Docket 7440 Tr. 6/2/09 at 30-31).

¹¹ Shadis Decl. Exhibit 18 (PSB Docket No. 7600 Tr. 1/11/11 at 107-108).

contaminants that may impact the environment, it remains unclear how continued operation may be affecting the environment in and around the site.

Plaintiffs' claim that there would be no environmental benefit from a shutdown of the plant is therefore incomplete, unsupported and unjustified.

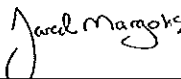
III. Conclusion

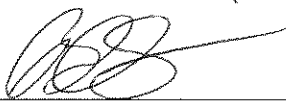
For the foregoing reasons, and those set forth in the Defendants' Opposition to Plaintiffs' Motion, the Court should find that the Plaintiffs have failed to show a likelihood of success on the merits and failed to show irreparable harm that would be prevented by a preliminary injunction. The Plaintiffs' motion must therefore be denied.

Dated at Jericho, Vermont this 31st day of May, 2011.

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NEW ENGLAND COALITION, INC.:

By: 
Jared M. Margolis, Esq.
243 Cilley Hill Rd.
Jericho, VT 05465
(802) 310-4054
jaredmargolis@hotmail.com

By: 
Brice Simon, Esq.
PO Box 240
Stowe, VT 05672
(802) 760-6773
brice.simon@stoweattorneys.com